

REMARKS

Claims 23-44 are now pending in the present application. Claims 1-22 have been canceled without prejudice to or disclaimer of the subject matter contained therein and claims 23-44 have been added. Reconsideration of this application, as amended, is respectfully requested.

Election of Species

The Examiner has required an election of species in the present application between:

Species I:	dispersion
Species II:	emulsification
Species III:	mixing
Species IV:	grinding
Species V:	attrition
Species VI:	atomization
Species VII:	deaeration

For the purposes of examination of the present application, Applicant elects Species I, recited in claims 23-44.

In the Examiner's Office Action, the Examiner indicates that no claims are generic. Applicant respectfully submits that the Examiner's position is incorrect. Although independent claims 23, 35 and 44 do not recite deaeration, each one of these independent claims recites each one of the processes of dispersion, emulsification, mixing, grinding, attrition and atomization. The Examiner has included deaeration as one of the species; however, deaeration appears only in claims 40-43. The deaerator recited in claims 40-43 is not a separate species of the different means of processing recited in independent claims 23 and 35. As can be clearly understood from dependent claims 40 and 41, the deaerator is a combination of the processing apparatus of independent claims 23 and 35, respectively, and an atomizing apparatus for removing bubbles from the atomized substance. Since the deaerator of claims 40 and 41 is not a separate species, Applicant submits that the Examiner would have to utilize restriction practice and not election of species practice in order to restrict claims 40-43 from the present application. Since claims 40-43 are respectively dependent upon independent claims 23 and 35, these claims include all of the limitations of independent claims 23 and 35 and therefore these combination claims would not be properly restrictable from the subcombination claims recited in independent claims 23 and 35. In view of this, it is requested that the Examiner withdraw the election of species requirement and examine claims 40-43 along with the remaining claims in the present application.

However, to the extent that the Examiner does believe that dependent claims 40-43 are directed to a different species, a fact which Applicant does not agree with, it is

requested that these claims be examined if it is determined that independent claims 23 and 35 define the present invention over the prior art.

In order to be responsive to the Examiner's Election of Species Requirement, Applicant has elected Species I, claims 23-44, which are directed to dispersion. It is respectfully submitted that a reasonable number of species are permitted in a single application. The present application contains only two species, if deaeration is considered a separate species. Species I-VI (dispersion, emulsification, mixing, grinding, attrition and atomization) all appear in independent claims 23-35 and 44. In addition, none of the dependent claims specify any of the particular processes of the dispersion, emulsification, mixing, grinding, attrition and atomization. It is therefore respectfully submitted that the Examiner's Election of Species Requirement is improper in view of the fact that a reasonable number of species are set forth in the present application.

Applicant also respectfully submits that a burden has not been established by the Examiner. Specifically, the Examiner is presenting an Election of Species Requirement to select one of the Species I-VI (and arguably Species VII) when there are no claims directed to the individual species of dispersion, emulsification, mixing, grinding, attrition and atomization. In view of this, Applicant respectfully submits that the Examiner's Election of Species Requirement is premature. Applicant should not be expected to elect a single species for prosecution, when no claims are directed to a particular species, but are readable on all of the Species mentioned by the Examiner. In view of this, it is requested

that the election of species requirement be withdrawn until a particular claim is directed to one of the species I-VI.

Favorable action on the present application is earnestly solicited.

CONCLUSION


All the stated grounds of rejection have been properly traversed and/or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider all presently pending rejections and that they be withdrawn.

It is believed that a full and complete response has been made to the Office Action, and that as such, the Examiner is respectfully requested to send the application to Issue.

In the event there are any matters remaining in this application, the Examiner is invited to contact Paul C. Lewis, Registration No. 43,368 at (703) 205-8000 in the Washington, D.C. area.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

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